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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General

Summary

The Secretary-General has the honour to present to the members of the General Assembly the report on the situation of human rights in the Democratic People's Republic of Korea submitted by the Special Rapporteur on the situation of human rights, Marzuki Darusman, in accordance with General Assembly resolution 66/174.

* A/67/150.

** The late submission of the report was due to operational issues involving staff turnover.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was established by the Commission on Human Rights in 2004 (resolution 2004/13). Since then, it has been extended annually by the Commission and, subsequently, by the Human Rights Council. By resolution A/HRC/RES/16/8 the Council extended the mandate of the Special Rapporteur for another year. Each year, the Special Rapporteur submits two reports, one to the Human Rights Council and one to the General Assembly.

2. The present report is based on a visit of the Special Rapporteur to Thailand from 25 to 29 June 2012 and on meetings held in Geneva, New York and Jakarta since March 2012. In addition to providing an overview of the current situation in the Democratic People's Republic of Korea, the Special Rapporteur presents conclusions and recommendations for the Government of the Democratic People's Republic of Korea and the international community.

II. Methodology

3. Since his appointment, the Special Rapporteur has made several requests to visit the Democratic People's Republic of Korea so as to better understand the situation and allow him to assist the State in taking appropriate measures for the promotion and protection of human rights. The Government has so far refused to cooperate with the Special Rapporteur, denying him entry into the Democratic People's Republic of Korea. In addition to requesting meetings with the Permanent Representatives of the Democratic People's Republic of Korea to the United Nations in New York and Geneva, in May 2012 the Special Rapporteur requested a meeting with a high-level delegation from the Democratic People's Republic of Korea visiting Indonesia, but received no response. The Government has refused to grant the Special Rapporteur meetings with the Permanent Representatives of the Democratic People's Republic of Korea to the United Nations, contending that the resolutions establishing the mandate represent politicization, selectivity and double standards in the area of human rights. The Permanent Mission of the Democratic People's Republic of Korea reiterated this stance in a note verbale to the President of the Human Rights Council dated 1 February 2012 (see A/HRC/19/G/1). This is the first such note verbale regarding the position of the Democratic People's Republic of Korea on the mandate since the new leadership was put in place. The Special Rapporteur regrets that a fresh approach has not been forthcoming.

4. In March 2012, for the first time since the establishment of the mandate in 2004, the Special Rapporteur approached the Government of China requesting a country visit. The Special Rapporteur has so far not received a response, but hopes for a positive reply from the Government.

5. In the absence of access to the Democratic People's Republic of Korea, the Special Rapporteur, like his predecessor, has benefited greatly from information received from and dialogue with concerned Governments during visits to neighbouring countries.

6. From 25 to 29 June 2012, the Special Rapporteur conducted a mission to Thailand, where he met with various actors, including officials of the Government of Thailand, the United Nations Children's Fund (UNICEF), the World Food

Programme (WFP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Population Fund (UNFPA), the Food and Agriculture Organization of the United Nations (FAO), non-governmental organizations, academics and diplomats. The purpose of the visit was to gather recent information on the human rights situation in the Democratic People's Republic of Korea and learn about the humanitarian and developmental activities of the United Nations in the country. Thailand has received a number of citizens from the Democratic People's Republic of Korea and hosts a number of regional offices of United Nations programmes and agencies active in the Democratic People's Republic of Korea.

7. In Thailand, the Special Rapporteur was briefed on important issues, including the challenges associated with fleeing the Democratic People's Republic of Korea, abuse of asylum seekers by traffickers and detention of asylum seekers in transit countries. He also discussed violations of human rights in the Democratic People's Republic of Korea, including issues relating to severe scarcity of food, malnutrition among children, deteriorating health conditions, deteriorating infrastructure and poor economic conditions. Finally, the Special Rapporteur was also briefed on the operations of the United Nations aimed at alleviating several of these severe living conditions in the Democratic People's Republic of Korea.

8. The Special Rapporteur was updated on the question of humanitarian access for non-governmental organizations and the United Nations to the Democratic People's Republic of Korea. While negotiating access has been a long and difficult process, he was informed that there have been considerable and steady improvements in the situation since 1995, when the first few humanitarian workers arrived in the country.

9. In accordance with resolution 2004/13 of the former Commission for Human Rights and subsequent Human Rights Council and General Assembly resolutions, the Special Rapporteur has combined his observations and the information he gathered during his mission with reports and briefing papers compiled by and interviews conducted with non-governmental organizations, United Nations entities, academics and numerous other reliable sources in preparation of the present report.

10. The Special Rapporteur extends his gratitude to the Government of Thailand for facilitating his visit to Thailand. The Special Rapporteur also thanks the representatives of the non-governmental organizations and United Nations regional offices for sharing information and updating him about their operations in the Democratic People's Republic of Korea.

III. Overview of the current situation

11. During the reporting period, the Special Rapporteur continued to receive reports of a wide range of human rights violations. He also recorded a number of testimonies of human rights abuses in the Democratic People's Republic of Korea. There were no indications of any improvement in the dismal human rights record of the country after Kim Jong Un succeeded his father on 17 December 2011, or in its approach to engaging with the United Nations human rights mechanisms. On the contrary, there was information that the authorities had detained officials suspected of potentially challenging or questioning a smooth leadership transition, and there were concerns that those detained would be sent to prison camps, and would suffer

forced labour, public execution or torture and other ill-treatment in the country's numerous political prison camps.[1]

12. In March 2012, for the first time since the inception of the mandate of the Special Rapporteur, the Human Rights Council resolution on the Democratic People's Republic of Korea was adopted without a vote, which reflects a general concern among Member States over the plight of the people in the Democratic People's Republic of Korea. The Special Rapporteur believes that it is critical to maintain the present level of support for the resolution in the coming years, and to continue to seek ways of engaging the new leadership with the support of influential Member States.

13. In April 2012, the Special Rapporteur provided a keynote message to a conference in Washington, D.C., on political prison camps in the Democratic People's Republic of Korea. He emphasized the need to use the conference to help the work towards greater clarity on figures, locations, cases and identification of the political prison camps, which has for a long time been flagged as a major human rights concern. The Special Rapporteur used the opportunity to stress that for several decades egregious human rights abuses in the Democratic People's Republic of Korea have been extensively documented by various actors, including organizations of the United Nations system, and called on States and the international community to undertake a comprehensive review of the relevant documents to assess the underlying patterns and trends and consider setting up a more detailed mechanism of inquiry.

14. During the reporting period, the people of the Democratic People's Republic of Korea continued to require international support, in the form of humanitarian and developmental assistance, to advance their economic, social and cultural rights, raise the standard of living and assure access to basic services. To that end, a number of United Nations entities, such as FAO, UNFPA, UNICEF, WFP and the United Nations Development Programme (UNDP), have been working to meet the most urgent needs of the population. During his mission to Thailand, the Special Rapporteur was informed that the focus of these actions has been on mitigating the protracted crisis by providing a sustained humanitarian response to address immediate and intermediate needs in nutrition, health, agriculture, water and sanitation, while also trying to address some of the root causes of the vulnerabilities so as to build resilience and sustainable livelihoods. While some of these actions are humanitarian in nature, this aid can contribute to the protection of human rights without absolving the Government, as bearing the principal duty for guaranteeing these human rights, of responsibility.

15. The United Nations country team in the Democratic People's Republic of Korea has indicated that while international humanitarian assistance has greatly contributed to improving the meeting of basic needs, 16 million people continue to suffer from various degrees of chronic food insecurity. Deeply rooted economic problems and high levels of malnutrition continue to cripple the country. Due to inadequate medical supplies and equipment, the health-care system is unable to meet basic needs. Sanitation, water supply and heating systems continue to fall into

[1] See, for instance, Amnesty International, *Amnesty International Report 2012: The State of the World's Human Rights* (London, 2012).

disrepair. As in previous years, young children, pregnant and lactating women and the elderly are particularly vulnerable.[2]

16. In March 2012, the United States Special Envoy for Human Rights in North Korea, Robert King, and the Deputy Assistant Administrator of the United States Agency for International Development, Jon Brause, visited Beijing for meetings with officials from the Democratic People's Republic of Korea to discuss the administrative details of a nutritional assistance programme targeting the most vulnerable populations in the country. The United States of America was to provide 240,000 tons of food aid, but this assistance was cancelled in April 2012 following the launch of a satellite by the Government of the Democratic People's Republic of Korea.

17. In June 2012, the United Nations requested $198 million to respond to humanitarian needs.

18. Approximately 2 million people in the most food-insecure areas of the country are currently receiving nutrition and food assistance. Around 10,300 children are expected to be treated for severe acute malnutrition and 57,000 for moderate acute malnutrition. The cereal deficit for the 2011/12 marketing year was estimated at 739,000 tons, leading to an uncovered cereal deficit of 414,000 metric tons.

19. In July 2012, the northern parts of the country experienced torrential rain, which killed 88 people, affected 18,856 households and left 62,889 individuals homeless. Some unconfirmed media reports indicated higher casualty figures. The Government also reported significant infrastructure damage affecting roads and bridges, and stated that over 30,600 hectares of arable land were affected, mainly in four provinces. At the time of drafting of the present report, the United Nations, at the request of the Government, was planning to deploy an inter-agency assessment team to visit the two most affected counties. In addition to requesting assistance from the United Nations, the Government has also approached other international agencies, including the International Red Cross and Red Crescent Movement and various resident non-governmental organizations operating as European Union programme support units. The flooding and consequential damage are expected to exacerbate the already severe food crisis.

20. In July and August 2011, diplomats from the Democratic People's Republic of Korea and the Republic of Korea held informal talks on the sidelines of meetings of the Association of Southeast Asian Nations. However, there has been no progress or formal agreement to resume the Six-Party Talks, which have been suspended since 2008. The resumption of the Six-Party Talks, which primarily focus on security, is essential so as to foster dialogue on a number of other critical issues in the Democratic People's Republic of Korea, including human rights.

21. In June 2012, the Democratic People's Republic of Korea amended its constitution to declare the country a nuclear State, but made no further changes to bring the constitution into alignment with international human rights instruments or democratic norms.

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[2] "Overview of needs and assistance in the Democratic People's Republic of Korea, 2012", available at http://www.wfp.org/sites/default/files/DPRK%20Overview%20Of%20Needs%20And%20Assistance%202012.pdf.

IV. Human rights situation in the Democratic People's Republic of Korea

22. The Special Rapporteur has received reports of the extensive use of political prison camps, poor prison conditions and prisoners being subjected to forced labour, torture and corporal punishment. During the reporting period, a coalition of non-governmental organizations compiled information on some of the most horrific abuses committed against the people of the Democratic People's Republic of Korea through the operation of prison camps. Some 150,000 to 200,000 people are estimated to be imprisoned in six camps for alleged political crimes. The Special Rapporteur intends to explore this issue in future reports. The present report focuses on freedom of opinion and expression, provisions of the Criminal Procedure Code that are not in line with international standards, the case of Oh Kil Nam and his family, the situation of asylum seekers and trafficking of persons and the economic situation of the people of the Democratic People's Republic of Korea and its impact on economic, social and cultural rights.

A. Freedom of opinion and expression

23. The Special Rapporteur is concerned by recent reports that the authorities of the Democratic People's Republic of Korea continue to impose severe restrictions on the rights to freedoms of opinion, expression and assembly, despite constitutional guarantees of these rights.[3] It is believed that strict control over all media has been maintained so as to prevent any challenges to the Government and its policies. While access to the media is still highly restricted, and those possessing contraband materials face harsh punishment, a significant number of people in the Democratic People's Republic of Korea access foreign DVDs and radio and television broadcasts in secret. There are also reports of the use of technology such as mobile telephones with access to Chinese networks to get information from outside the country.[4]

24. Asylum seekers interviewed on various occasions claim that the most popular way for citizens of the Democratic People's Republic of Korea to obtain external information is through foreign DVDs smuggled across the border. Although possession of a tuneable radio is a crime, those with access can hear Seoul-based stations such as Radio Free Chosun, Open Radio for North Korea, North Korea Reform Radio, Free North Korea Radio, Voice of America and Radio Free Asia. Surveys have found that 27 per cent of the people in the Democratic People's Republic of Korea listen to foreign radio and 24 per cent watch television programmes from China and the Republic of Korea that can be received near the border.[4]

25. While there are an estimated 500,000 to 700,000 mobile telephones in the Democratic People's Republic of Korea, the network does not have international access. People living near the border can illegally use Chinese mobile networks, which can reach up to 20 km inside the Democratic People's Republic of Korea. It is

[3] See Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights* (London, 2011).

[4] See International Crisis Group, "North Korea succession and the risks of instability" (Asia report No. 230, 25 July 2012).

estimated that there are 2 million computers in the country, which are generally not connected to the Internet. The Intranet is reserved for Government offices, academic institutions and research institutes. Foreign media files can be shared through USB flash drives and MP3 players, but the means of disseminating information remains low technology and sometimes outdated.

26. Due to ambiguous terms in the Criminal Code of the Democratic People's Republic of Korea, the State can impose severe restrictions on the enjoyment of freedom of opinion and expression. For instance, article 166 of the Code refers to punishment of a worker in the communications and broadcasting service sector who makes "irresponsible" communications or does not conduct broadcasting in a "normal manner", resulting in "serious consequences". The use of terms such as "normal manner", "serious consequences" and "irresponsible" leaves scope for the Government to suppress freedom of opinion and expression. It should be noted that the universal right to freedom of expression includes the right to receive and impart information. Article 195 of the Code provides for punishments, including short-term labour, for a person who listens to broadcasts that are hostile to the Republic or collects, keeps or distributes enemy propaganda, which can be broadly interpreted to restrict people in the exercise of their right to freedom of opinion and expression or to allow the Government to place severe restrictions on independent media in the country. The likelihood of such abuse is more likely in the absence of an independent judiciary, as is the case of the Democratic People's Republic of Korea (see A/HRC/19/65).

B. Criminal Code of the Democratic People's Republic of Korea

27. In his report submitted to the Human Rights Council at its nineteenth session (A/HRC/19/65), the Special Rapporteur addressed the question of the death penalty and articles in the Criminal Code and its addendum that allowed for such punishment. In addition, the Special Rapporteur underscored concerns about due process of law in the Democratic People's Republic of Korea.

28. The Special Rapporteur has deep concern about several other articles in the Criminal Code that are either not in line with international standards or contain terms that are not defined or are vague, thus allowing scope for misinterpretation and abuse by the State. For instance, the Criminal Code prescribes punishments, mainly in the form of hard labour, for a person who "plunders" the property of the State (see art. 90), occupies a property of the State by "deception" (see art. 92), "defrauds" the State or a social cooperative organization (see art. 92) or "hinders" the normal management of the economy [...] of State property (see art. 136). However, nowhere in the Criminal Code are terms such as plunder, deception, defraud or hinders defined.

29. The Special Rapporteur is also apprehensive that a number of provisions stipulate punishments for acts that would normally not warrant criminal liability. For instance, article 143 calls for punishment by labour for up to two years if an inspector fails to inspect or repair equipment that leads to damage or stoppage of production of any goods. Similarly, the Code provides for punishment by labour for up to two years for an agricultural supervisor should he fail to give directions to

farmers in accordance with *juche* (self-reliance) agricultural methods.[5] Article 200 of the Criminal Code punishes plagiarism by labour for up to two years.

30. The Special Rapporteur is concerned about article 233 of the Criminal Code, which foresees up to five years of labour for anyone illegally crossing a border of the Democratic People's Republic of Korea, which is in contravention of the right to freedom of movement. This provision appears to target asylum seekers upon forcible return to the country. The Special Rapporteur refers to the concluding observations of the Committee on Economic, Social and Cultural rights, which noted allegations of citizens from the Democratic People's Republic of Korea who had travelled abroad without passports being sent to labour camps upon return to the country (see E/C.12/1/Add.95, para. 15).

C. Case of Oh Kil Nam

31. The case of Oh Kil Nam and his family was reported to the Special Rapporteur and the Secretary-General in November 2011. Additional information was also brought to the Working Group on Arbitrary Detention, which had first been apprised of the case in 1995.[6] On 28 June 2012, Mr. Oh addressed the twentieth session of the Human Rights Council.

32. According to the complaint received, Mr. Oh, a national of the Republic of Korea, and Shin Sook Ja, left the Republic of Korea to work in the then-Federal Republic of Germany in 1970. They had two daughters, Oh Hae Won and Oh Kyu Won. During the 1980s, Mr. Oh was reportedly invited by agents from the Democratic People's Republic of Korea to move to that country, and was allegedly promised a stable job as an economist in the Democratic People's Republic of Korea, along with medical assistance for his wife, who was suffering from hepatitis. Mr. Oh accepted the job offer and, in 1985, the family emigrated to the Democratic People's Republic of Korea.

33. It is alleged that for their first three months in the Democratic People's Republic of Korea the family was placed in a remote mountainous region, where they were educated in the *juche* (self-reliance) ideology and the political theory of Kim Il Sung. After this period, Mr. Oh was sent to the Mount Chilbo Liaison Office to work on a radio programme entitled "Voice of national salvation", to be broadcast to the Republic of Korea. Mr. Oh was then instructed by the Government to bring in more Koreans from the Republic of Korea who were studying in Germany. It is claimed that Ms. Shin allegedly objected to this activity and asked her husband to flee the Democratic People's Republic of Korea. Shortly thereafter, Mr. Oh was able to leave the country under the pretext that he was going to Germany to bring in more students holding the nationality of the Republic of Korea.

[5] A number of other articles of the Criminal Code do not warrant criminal liability, including article 151 (violation of production), 152, which deals with violation of scientific and technological requirements, 156 on violation of product supply regulations, and 206, which provides for punishment by labour of up to two years for unjust selection of athletes for important competitions, resulting in serious consequences.

[6] The source of the information cannot be disclosed due to the methods of work of the Working Group.

34. Ms. Shin and her two daughters were allegedly detained for the purpose of ensuring Mr. Oh's loyalty. On his way to Germany in 1986, Mr. Oh defected to Denmark, where he requested political asylum. The following year, Ms. Shin and her daughters were taken to Yodok prison camp allegedly because Mr. Oh had not returned to the Democratic People's Republic of Korea. Such detention is generally used for guilt by association, punishing the entire family for the acts or the alleged acts of one relative.

35. The Working Group on Arbitrary Detention sent a communication to the Government of the Democratic People's Republic of Korea on 1 March 2012 requesting detailed information about the current situation of Ms. Shin and her daughters, and clarification about the legal provisions justifying their continued detention. On 27 April 2012, the Government responded that Ms. Shin had died of hepatitis and claimed that the two daughters of Ms. Shin did not regard Mr. Oh as their father since he had abandoned his family and driven their mother to her death. The Government claimed that Mr. Oh's daughters refused to communicate with him.

36. The source of the complaint[6] requested on 2 May 2012 further verification of Ms. Shin's death and the situation of the two daughters. According to the source, if the Government is claiming that Ms. Shin is not being arbitrarily detained and has died, it must provide precise information on the time and place of her death. The source further requested the Working Group to consider the detention of Oh Hae Won and Oh Kyu Won as arbitrary and in violation of international law.

37. On 2 May 2012 the Working Group adopted an opinion that the continued detention of Ms. Shin, Oh Hae Won and Oh Kyu Won was arbitrary, and in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights. On that basis, the Working Group requested the Government to take the necessary steps to remedy the situation, which, in its view, included immediate release from detention and an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights (see A/HRC/WGAD/2012/4). The Special Rapporteur concurs with the decision of the Working Group and renews his call made to the Government in his March 2012 report to the Human Rights Council to release Ms. Shin and her daughters and allow them to reunite with Mr. Oh.

38. This case is an example of citizens of the Democratic People's Republic of Korea held in prison camps for guilt by association. The Special Rapporteur has noted disturbing reports from non-governmental organizations and other sources of widespread arbitrary detention and forced labour, including situations similar to the above case, with extremely long terms of deprivation of liberty, without specific charges or due process and with gross violations of basic human rights. The Special Rapporteur notes that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of international law may constitute crimes against humanity.

D. Economic situation and its impact on economic, social and cultural rights

39. The economic performance of the Democratic People's Republic of Korea continues to be weak. Overall, between 2005 and 2012 there has been about 2 per

cent growth in real gross domestic product (GDP), implying an annual compound growth rate of about 0.4 per cent in real national income. Current population growth stands at about 0.6 per cent per annum, which indicates that the per capita real GDP declined during this period. There was modest economic recovery from 1999 to 2005, followed by negative growth in three out of the past five years. While agriculture remains the major contributor to the national economy, its share decreased from 30 to 20 per cent of GDP between 2000 and 2012. In addition, volatility in agricultural production is a major challenge in maintaining a stable economy and improving the living standards of the population.[7]

40. Inflation has been a serious problem in recent years, worsening unrelentingly after the failed initiative to revalue the currency in 2009.[8] The Democratic People's Republic of Korea has previously experimented with economic opening to attract foreign capital, but has cancelled the initiative each time.[9] Limited foreign participation in the economy is allowed in special economic zones, where investment is approved on a case-by-case basis. In early June 2011, the Government declared that it would start two new special economic zones, in addition to the Kaesong industrial zone that was developed in the past decade.[10] The Government also made statements in 2010 and 2011 on its intent to promote light industry and agriculture, in contrast to previous years when the Government did not make mention of non-military priorities.

41. However, there are currently no signs that the Government will undertake any of the long-term structural reforms that are necessary to significantly spur national economic growth.

42. The Special Rapporteur believes that economic vitality has a direct correlation with the ability of a State to fulfil and deliver economic, social and cultural rights. In that regard, he notes that allowing greater foreign participation in the economy is an important initiative by the Government. However, in order to have any real impact on the situation of the people in the country and to address major gaps in the enjoyment of economic, social and cultural rights, the Government needs urgently to adopt a robust economic policy guided by human rights principles and aimed at reducing extreme poverty, malnourishment and mortality, and improving the day-to-day life of the people. As the Democratic People's Republic of Korea has ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, it has made a commitment to comply with the provisions of these Covenants, and must be held accountable for policies and actions that violate these norms. Some of the challenges faced by the Democratic People's Republic of Korea in realizing economic, social and cultural rights are due to the weak economy and erroneous policies which are briefly described below.

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[7] "Overview of needs ..." (see note 2).

[8] Estimates suggest that inflation on an annual basis has averaged 131 per cent for rice and 138 per cent for maize, although the average inflation rate rose less rapidly in 2011 than in 2010.

[9] "North Korean succession ..." (see note 4).

[10] One of the two industrial zones is expected to be near the port city of Rason on the east coast, and the second on the island of Hwanggumpyong. These economic zones are strictly controlled by the State.

43. The United Nations estimates that 16 million people in the Democratic People's Republic of Korea continue to suffer from varying degrees of chronic food insecurity and high malnutrition rates.[11] Undernutrition continues to bring down the quality of life of the population and has negative effects on health, productivity, income, asset growth and poverty levels. It is well documented that the main problem of undernutrition is a direct consequence of the ongoing shortages of food suffered by the country since the mid-1990s.[12] In recent years, there has also been a disturbing trend of lowered food imports to offset the cereal shortfalls, thus presenting further challenges for vulnerable groups.

44. In addition to geographical and climatic conditions, production during agricultural seasons is severely limited by input shortages: availability and repair of mechanized equipment, availability of quality seeds, fertilizers, pesticides and fuel and labour shortages.[12] Food and nutrition concerns must be addressed in a more strategic manner, with simultaneous short- and long-term interventions in areas of agricultural production, nutritional support, food assistance and prevention and treatment of malnutrition. The Special Rapporteur reiterates concerns he has raised in relation to the ability of the State to fulfil its obligation with respect to the right to food in his previous reports to the Human Rights Council and the General Assembly.

45. With regard to the right to water and sanitation, as an integral part of the right to an adequate standard of living, reports received from the country indicate challenges in access to water, given that the extensive piped water supply systems installed during the early 1980s are now in poor condition due to low levels of investment and rehabilitation, shortage of electricity and destruction by natural disasters. The same can be said for the sanitation system; while almost all households have access to some form of sanitation facility, observations particularly in rural areas suggest it is almost always in poor condition. As a result, diarrhoea caused by inadequate water quality, poor sanitation and unhygienic personal behaviour remains a leading cause of mortality for children under 5 years of age.

46. With regard to the right to the highest attainable standard of physical and mental health, despite some improvements in recent years the current infant mortality rate at 19 per 1,000 live births and maternal mortality rate at 77 per 100,000 live births are still considerably higher than in the 1990s (14/1,000 and 54/100,000, respectively). Lack of access to quality reproductive health, including family planning and newborn and child health services, remains the main constraint. Additional challenges are the lack of resources to expand essential service packages throughout the country, limited information on international standards and best practices and inadequate monitoring and supervision capacities. The inadequate nutritional status of pre-pregnant and pregnant women also has a negative effect on maternal mortality and morbidity.[12]

47. A factor that contributes to the worsening health condition of the people is the dire state of the health-care system. The system has faced financial constraints over the past two decades, which has led to a general rundown of the infrastructure. Due to inadequate medical supplies and equipment, the health-care system is unable to meet basic needs, which seriously affects the health and nutrition status of the people, especially pregnant women, newborns and children under the age of 5. Lack

[11] "Overview of needs ..." (see note 2).

[12] See "Strategic framework for cooperation between the United Nations and the Government of the Democratic People's Republic of Korea, 2011-2015".

of electricity and heating systems, inadequate water and sanitation in health facilities and lack of ambulance care obstruct the ability of the health-care system to respond to medical emergencies and, in addition, contribute to high mortality among newborns, children under the age of 5 and women in delivery.[13]

48. The Special Rapporteur echoes concerns raised by the Committee on Economic, Social and Cultural Rights and endorses its recommendation that the State party should pay increased attention to adequate nutrition for children suffering from chronic malnutrition and to access to adequate health care, so as to address the potential severe consequences on their health.[14]

49. On the occasion of its upcoming review by the Committee on Economic, Social and Cultural Rights,[15] the Special Rapporteur urges the Government to use the information gathered by various Government entities, with the help of the United Nations organizations, to compile statistics and other data as the necessary tools to help identify gaps and trends. This exercise would not only help the Government to comply with its international treaty body reporting obligations, but it would also help it to address the neglected duty of fulfilling the economic, social and cultural rights of the people.

50. Against this backdrop, the Special Rapporteur is disconcerted by the recent declaration by Kim Jong Un that his first, second and third priorities were to strengthen the military. Slow economic growth coupled with a "military first" policy will be detrimental to the welfare of the people of the Democratic People's Republic of Korea. The Special Rapporteur urges the Government to make enough resources available for the most critical needs such as food, medicine, water and sanitation.

51. Besides adopting misguided economic policies and giving priority to the military over the general population, the Government compounds its failures to fulfil the economic, social and cultural rights of the people through a peculiar form of discrimination. The Government continues to classify the population according to a system of loyalty, which results in unequal access to food, housing, medical care and employment and education opportunities. The two categories of citizens who suffer the most from this system are classified as the "hostile" class and the "wavering" one, which include descendants of clerks in the Japanese colonial administration, Christian activists, female shamans, entrepreneurs and family members of defectors to the Republic of Korea. Members of the "hostile" class face the greatest number of restrictions and cannot live in Pyongyang or other major cities or be admitted to colleges or universities.

52. The Special Rapporteur recommends that a human-rights-based approach to development and humanitarian action be adopted to tackle such discrimination and exclusion, which are one of the root causes of impoverishment. The Special Rapporteur calls on the Government and, where applicable, United Nations offices, to adopt a human-rights-based approach to programmes and policies on education, health, water, sanitation and food, with the aim of supporting better and more sustainable outcomes. This should be done through analysing the inequalities,

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[13] "Overview of needs ..." (see note 2).

[14] See E/C.12/1/Add.95 for complete recommendations and conclusions.

[15] The Democratic People's Republic of Korea was due to report to the Committee on Economic, Social and Cultural Rights on 30 June 2008.

discriminatory practices and unjust power relations that are often at the heart of such violations of rights.

E. Asylum seekers from the Democratic People's Republic of Korea and trafficking

53. According to information received, most people who leave the Democratic People's Republic of Korea are driven to do so by hunger and denial of equal access to basic civil, political, economic, social and cultural rights. There is currently no systematic collection of data or profiles of persons fleeing the Democratic People's Republic of Korea, due largely to the inability of the international community to access the points of exit from the country or the transit zones in north-east and south-east Asia. It is, therefore, difficult to estimate reliably the number of people seeking to leave the Democratic People's Republic of Korea. It can takes months, and sometimes years, before asylum seekers either reach a country where proper statistics are available or a final destination, usually the Republic of Korea. Non-governmental organizations and asylum seekers informed the Special Rapporteur that since the leadership transition in the Democratic People's Republic of Korea in December 2011, the number of asylum seekers successfully crossing the border between the Democratic People's Republic of Korea and China had fallen markedly due to heightened security.

54. Numerous testimonies and reports refer to deaths, disappearances and imprisonment before asylum seekers are able to reach a safe third country, as a result of capture and the high incidence of refoulement to the Democratic People's Republic of Korea. Statistics recorded at the final destination do not therefore necessarily correspond to the number of people attempting to leave the Democratic People's Republic of Korea. However, the number of people from the Democratic People's Republic of Korea arriving in the Republic of Korea, which is the final destination for most of the asylum seekers, stands on average at slightly over 2,000 a year for the past seven to eight years. Between January and July 2012, roughly 915 asylum seekers, including 656 women, reportedly arrived in the Republic of Korea.[16]

55. Over the years, Thailand has become a regular transit country before asylum seekers are resettled in the Republic of Korea. Between January and June 2012, roughly 600 people, including 455 females, seeking international protection are reported to have arrived in Thailand. Thailand has consistently adhered to the principle of non-refoulement with respect to asylum seekers from the Democratic People's Republic of Korea.

56. Asylum seekers from the Democratic People's Republic of Korea are sometimes aided by human rights defenders and non-governmental organizations in transit countries. The Special Rapporteur is alarmed by recent arrests of human rights defenders working with asylum seekers in transit countries.[17] In the absence of human rights defenders, most asylum seekers, particularly women and children, have been exploited by traffickers. In fact, human trafficking of asylum seekers

[16] Republic of Korea, Ministry of Unification.

[17] See, for instance, "S. Korean activist detained in Vietnam for helping N. Korean defectors", Yonhas News Agency, 25 June 2012.

from the Democratic People's Republic of Korea is reported to be a widespread and systematic problem that requires urgent attention.

57. The pressing issue of non-refoulement of asylum seekers to the Democratic People's Republic of Korea has constantly been underscored by the Special Rapporteur. In February 2012, 31 people who fled the Democratic People's Republic of Korea and sought international protection in China were arrested for being in the country illegally. Their case was raised directly with the Government of China by the Chair/Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary and arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in an urgent appeal on 24 February 2012. The case drew a great deal of attention from the international community and was widely discussed at the Human Rights Council, where many Member States and non-governmental organizations called for the non-refoulement of these people. In March 2012, the Special Rapporteur, during his various discussions and his interactive dialogue at the Human Rights Council, also appealed to all neighbouring countries to honour the principle of non-refoulement. Despite these pleas, various reports indicate that several of the 31 asylum seekers were returned to the Democratic People's Republic of Korea. Such reports are deeply worrying and the Special Rapporteur reiterates his previous calls to the neighbouring countries to respect the principle of non-refoulement and abstain from forcibly returning persons seeking international protection.

58. On 28 March 2012, in its first such correspondence to the Office of the United Nations High Commissioner for Human Rights, the Institute for the Research of Human Rights, located in Pyongyang, argued that people who flee from the Democratic People's Republic of Korea are not defectors, asylum seekers or refugees, but illegal immigrants who leave the country for economic reasons or to escape unpardonable crimes against the country.

59. The Special Rapporteur acknowledges that while some persons flee the Democratic People's Republic of Korea due to persecution, others leave for economic reasons. Whatever their motivation, it is pertinent to provide all individuals with protection. The Convention relating to the Status of Refugees of 1951, founded on the principle of non-refoulement for refugees, defines a refugee as someone who is unable or unwilling to return to his or her country of origin due to a well-founded fear of persecution based on race, religion, political opinion, nationality or membership in a social group. Persons leaving a country for reasons of economic hardship may be entitled to refugee status if they have been compelled to leave the country due to discriminatory economic and political policies by the Government. The social structure in the Democratic People's Republic of Korea revolves around the official *songbun* structure, under which there are three groups, usually known as "core", "wavering" and "hostile" classes. Every single Korean from the Democratic People's Republic of Korea belongs to one of these groups.

60. Members of the "core" class include those whose direct male ancestors contributed to the foundation and strengthening of the Government of the Democratic People's Republic of Korea, those who the Government perceives as "heroes" of the Korean War or party bureaucrats. For all practical purposes, over the past half century, only people belonging to this category, who constitute the elite, have been promoted to key positions in the Democratic People's Republic of Korea and party bureaucracy.

61. Most people who flee the Democratic People's Republic of Korea belong to the "hostile" class. In such cases, there are strong grounds for arguing that their departure is motivated by political persecution or due to their membership in a particular social group, two of the five conditions established by the Convention relating to the Status of Refugees.

62. Individuals who flee the Democratic People's Republic of Korea due to economic hardship may also be refugees *sur place*. Refugees *sur place* may not fit the definition of persons who are refugees when they leave their country, but become refugees subsequently because of a valid fear of persecution upon their return, due to their membership in one of the specified categories. People from the Democratic People's Republic of Korea who leave their country for economic reasons can thus become refugees *sur place* if they have valid fears of persecution upon return.

63. In the Democratic People's Republic of Korea it is a criminal offence for citizens to leave the country without permission. Article 62 of the Criminal Code bans citizens from travelling to another country without State permission, which is in clear violation of the obligation of the Democratic People's Republic of Korea under article 12 of the International Covenant on Civil and Political Rights. There are numerous reports and testimonies of persons punished with up to five years in a prison camp or sometimes by death for leaving the country without permission. Furthermore, article 245 of the Criminal Code, which stipulates punishment for persons who damage the prestige of the State in foreign countries, can also be used against asylum seekers, who are generally in a similar plight, drawing a grim picture of their country of origin.

64. The Special Rapporteur reminds States that while taking measures to prevent exploitation by traffickers or people smugglers, they should also ensure that asylum seekers have access to assessment procedures and protection, including access to organizations working on refugee issues.

65. The Special Rapporteur further calls on States in the region that are not yet party to the Convention on the Status of Refugees of 1951 to ratify the Convention at the earliest opportunity.

V. Recommendations and conclusions

66. **The Special Rapporteur wishes to emphasize the need for the Democratic People's Republic of Korea to ensure the overall protection and promotion of human rights in the country as provided under international human rights instruments, with a specific focus on, but not confined to, freedom of movement, freedom of expression and opinion, and the rights to food, health, water and sanitation.**

67. **The Special Rapporteur calls on the Government to recognize the critical food and health situation in the country and rethink its approach to the "military first" policy. He calls on the Government to reallocate enough resources to improve the living standard of the people in the country.**

68. **The Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to repeal provisions in its legislation that run counter to international standards. In particular, he draws the attention of the**

Government to provisions of the Criminal Code and the addendum that he has referred to in the present and previous reports.

69. **The Special Rapporteur calls on the Government to release immediately all persons who have been held by the Government for guilt by association. The Special Rapporteur renews his call to the Government to release Shin Sook Ja and her two daughters and reunite them with Oh Kil Nam.**

70. **While commending Thailand for adhering to the principle of non-refoulement, the Special Rapporteur calls on all other countries where people of the Democratic People's Republic of Korea are seeking refuge or transiting, to protect such people, treat them humanely and abstain from forcibly returning them to the Democratic People's Republic of Korea, as provided under the Convention relating to the Status of Refugees of 1951. Furthermore, the Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to share information with the international community on the status and treatment of persons who were forcibly returned to the country.**

71. **The Special Rapporteur stresses the need for the international community to provide continued humanitarian support to the people of the Democratic People's Republic of Korea. Provision of humanitarian aid, including food, medical and other urgent humanitarian needs, should not be contingent upon any political conditions.**

72. **The Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to recognize the need to cooperate with the Office of the United Nations High Commissioner for Human Rights to advance human rights in policies and programmes.**